COLLATERAL ATTACK UPON ADJUDICATIONS OF JURISDICTIONAL FACTS. — Under the full faith and credit clause of the Constitution of the United States, a problem frequently recurs as to a court's power to inquire into certain facts, previously adjudicated by another court, which were conditions precedent to the power of that court to take some ultimate action in the suit.[1]

It is well established that full faith and credit must be given to every judicial act which a court does within its jurisdiction.[2] And that inquiry into the jurisdiction of the court to do the particular act, in our case to make a finding of fact, is always permitted.[3] This involves the questions of jurisdiction of the sovereign, delegation of the jurisdiction by the sovereign to its courts, and the performance by the court of the requisite formalities preliminary to acquiring jurisdiction. If the fact, for the adjudication of which credit is claimed, is one of these conditions precedent to the jurisdiction of the court to make *that adjudication*, it can of course be inquired into by the forum, so that a finding of such a fact practically does not receive full faith and credit. So much for the naked statement of the principles involved. They are clear and present no difficulty. It is with the application of these principles, more especially with the question as to what facts are requisite to jurisdiction to make the finding, that the problem becomes troublesome.

In the first place, it is not always sufficiently emphasized, if apprehended at all, that, as regards the question of jurisdiction, a finding of fact must be looked at as a separate and distinct act of the court, having its own separate and distinct requirements for jurisdiction. For instance, in a proceeding *in personam* between two parties, the court in making a finding of fact is really declaring divisibly that, as to each party, in connection with the subject matter of the suit, this fact is so. In order to do this, jurisdiction of the respective party is all that is necessary. Again, if the proceeding is *in rem*, the court is saying that as regards the *res*, as to all the world, this fact is so. If the court had jurisdiction of the *res* here, it had jurisdiction to make the finding as to every one: but if there was no jurisdiction of the *res*, the court had jurisdiction to make the finding as to any parties before it and it would be binding as to them.[4]

[1] The problem arises also in intra-jurisdictional cases under the doctrine of "*res judicata*."

[2] Miller Brewing Co. *v.* Capital Ins. Co., 111 Ia. 590, 82 N. W. 1023; Harris *v.* Balk, 198 U. S. 215.

[3] *In re* Norton's Estate, 32 N. Y. Misc. 224, 66 N. Y. Supp. 317; Thum *v.* Pyke, 8 Idaho 11, 66 Pac. 157; Field *v.* Field, 117 Ill. App. 307; Marshall *v.* Owen & Co., 171 Mich. 232, 137 N. W. 204.

[4] See Baker *v.* Baker, Eccles & Co., U. S. Sup. Ct., Oct. Term, 1916, No. 115. The results of this proposition, though at first glance they appear unfortunate, upon reflection prove perfectly just. For instance, in a divorce suit the fact of domicil to found jurisdiction over the status is adjudicated by a court to be within its jurisdiction. Both parties are before the court. Such a finding, it would seem, should be binding upon these parties, and as a result of this the decree of divorce is binding upon them. When it is remembered that it is only binding as to the parties over whom the court making the adjudication had jurisdiction, that they have had their day in court, this appears perfectly proper.

The authorities in the matter of divorce appear to take a contrary position on the grounds that it would be inexpedient to have parties divorced as to themselves and not as to others. Andrews *v.* Andrews, 176 Mass. 92; affirmed 188 U. S. 14. It is clear that, so far as the parties themselves are concerned, there is no principle of ex-

The courts, though generally reaching a sound result on this matter, have apparently failed as far as expressed opinions are concerned to rest the matter on its proper theoretical basis.[5]

Assuming the proper approach to the problem, it is often somewhat difficult to determine exactly what facts are conditions precedent to jurisdiction to make the particular finding. As to facts going to the jurisdiction of the sovereign — matters required by doctrines of conflict of laws — there is little trouble.[6] But it is otherwise where the requirements of the sovereign in delegating jurisdiction are in question. A recent federal court case [7] furnishes a good example. The United States bankruptcy laws declare that a United States District Court shall have jurisdiction to adjudge a person bankrupt who has had his principal place of business for the preceding six months within its district.[8] A district court upon a voluntary petition in bankruptcy makes a finding that the last principal place of business of a corporation is within its district. This finding is offered as binding in later proceedings in another court, and the question arises: is the existence of this fact one of the conditions precedent to the court's jurisdiction to adjudicate this fact? The proceeding in bankruptcy is *in rem*,[9] the "*res*," so to speak, apparently, being the question whether or not the petitioner is in such a situation that he should be declared a bankrupt. So that the finding which the court made was, that as to this question, as against the world, the last place of business of the corporation was in the district in question. Such a finding necessitates jurisdiction of the *res*,— the question of bankruptcy.[10] The question now comes, does the enactment that the court shall have jurisdiction to adjudicate bankrupt, persons who have had their last place of business within the district of the court, mean that unless this is so the court shall not have jurisdiction of the question for any purpose, or does it mean that though other courts also have jurisdiction of the *question*, for reasons of local convenience, only this court shall be authorized to do the final act. The court in the principal case found that the enactment meant the latter.[11] The result of such a con-

pediency or justice upon which a denial of jurisdiction to the court making the finding could be based. As the policy upon which the Massachusetts case goes seems more apparent than real, it would seem to be the better rule to hold the adjudication binding. See Peaslee, "Ex parte Divorce," 28 HARV. L. REV. 457, particularly at 471.

[5] The courts in working out the question seem in their language to confuse the question of jurisdiction to adjudicate the particular fact with that of general jurisdiction of the subject matter and the parties, and sometimes with jurisdiction to take ultimate action in the case. See Noble *v.* Union River Logging R. Co., 147 U. S. 165, 173, 174; Roszell Bros. *v.* Continental Coal Corporation, 38 Am. B. Rep. 31, 34.

[6] *E. g.*, it is generally fairly clear whether or not the fact of jurisdiction of a *res* or of certain parties is necessary to the jurisdiction of a court to make an adjudication of that fact.

[7] Roszell Bros. *v.* Continental Coal Corporation, *supra*, n. 5.

[8] Act of July 1, 1898, c. 541, ch. 2, § 2, 30 STAT. AT L. 544.

[9] See *In re* Hintze, 134 Fed. 141, 142; Roszell Bros. *v.* Continental Coal Corporation, 38 Am. B. Rep. 31, 36.

[10] Such a finding would be binding against any parties who were before the court although there was no jurisdiction of the *res*, but here the finding is set up as binding against all creditors, and it does not appear that any creditors were before the court, so that jurisdiction of the *res* is necessary.

[11] The only other ground upon which the case could go is that there was jurisdiction of all the creditors in the prior suit. But there was no mention of this in the opinion, and it seems clear that was not the fact, so that the court must be taken to mean that the adjudging court had jurisdiction of the *res*.

struction appears to be that under the bankruptcy laws any United States District Court has jurisdiction of the question of bankruptcy in the case of a voluntary petition.[12] This would mean that *any* federal court can make adjudication binding against all creditors, though there is no personal jurisdiction over the creditors, and further, as a consequence of this, the court's ultimate declaration of bankruptcy cannot be questioned. The correctness of a construction reaching such a result is at least arguable.

---

# RECENT CASES

ADOPTION — RIGHTS OF CHILD UNDER UNEXECUTED CONTRACT OF ADOPTION. — One Cameron contracted to adopt the plaintiff, who therefore lived in his family as a daughter until his death. There was no actual adoption. The plaintiff now claims an interest in the estate of Cameron's son, who died intestate survived only by a brother. *Held*, that the plaintiff may not recover. *Malaney* v. *Cameron*, 161 Pac. 1180 (Kan.).

To take by inheritance, a foster child must be adopted in the manner provided by statute. See *Chehak* v. *Battles*, 133 Ia. 107, 114–115, 110 N. W. 330, 333. But when the foster parent has died without performing a contract to adopt, equity will generally grant relief, although the adoption itself cannot actually be carried out at law after the adoptive parent's death. *Starnes* v. *Hatcher*, 121 Tenn. 330, 117 S. W. 219. If the contract contains an express provision to leave property, this will be specifically enforced. *Pemberton* v. *Pemberton's Heirs*, 76 Neb. 669, 107 N. W. 996. But *cf. Jaffee* v. *Jacobson*, 48 Fed. 21. In the absence of an express provision, the contract may also be specifically enforced as an agreement to give such property as a natural child would have received. *Lynn* v. *Hockaday*, 162 Mo. 111, 61 S. W. 885; *contra*, *Renz* v. *Drury*, 57 Kan. 84, 45 Pac. 71. This is sound, since the chief remaining incident of a legal adoption is the right of inheritance. There is, however, no obligation on the parent not to dispose of his property to others. *Austin* v. *Davis*, 128 Ind. 472, 26 N. E. 890. That the child be made an heir is thus the substance of the contract to adopt. It may therefore be said that as a consequence of the right of specific performance the child is regarded in equity as adopted. See *Lynn* v. *Hockaday*, *supra*. But this equitable relation, arising solely from the contract, can give the child rights only against the parent or his property. There is thus no way to reach the property of relatives. Even when an adoption is legally completed, inheritance from collateral relatives must be specifically provided for by statute. *Wallace* v. *Noland*, 246 Ill. 535, 92 N. E. 956.

ATTORNEYS — DUTY TO THE COURT — DUTY TO DISCLOSE TRUTH IN A CRIMINAL CASE. — An experienced attorney defending a criminal, permitted a witness to testify falsely upon a collateral matter affecting the witness's credibility, and though he knew it to be false, he adopted the testimony as true in his summing up. There was no evidence that the attorney instigated the false testimony. *Held*, that he be disbarred. *In re Palmieri*, 162 N. Y. Supp. 799 (App. Div.).

By rule five of the Canons of Ethics of the American Bar Association, a lawyer who has undertaken to defend a criminal "is bound by all fair and honorable

[12] The facts of the case go no further than a voluntary petition, but on principle there would seem to be no distinction between a voluntary and an involuntary proceeding as to this question, provided that the court had jurisdiction of the bankrupt in the latter case.